Cancellation, except where there is some independent ground of equitable jurisdiction, must rest upon the *quia timet* principle. Theoretically if an instrument makes a *prima facie* case against the complainant, the fact that he has a legal defence does not oust the jurisdiction of equity; for the legal defence may become seriously prejudiced or even dissipated before he has opportunity to present it. Hence it is commonly recognized that the existence of a legal defence is not a bar to suit in equity . *Buxton* v *Broadway*, 45 Conn. 540; *Fuller* v. *Percival*, 126 Mass. 381; *Metler* v. *Metler*, 18 N. J. Eq. 270, 19 N. J. Eq. 457. The courts of New York have taken a different position. If a legal defence exists the complainant is told that he has adequate protection through perpetuating the testimony of his witnesses. *Allerton* v. *Belden*, 49 N. Y. 373. Perpetuation of testimony, however is but a poor substitute for the actual witness and is unavailable if the witness remains in the jurisdiction. Yet it is common experience that witnesses forget. The undesirability of allowing the holder of an instrument to delay litigation and vex the maker at a remote period was recognized in *McHenry* v. *Hazard*, 45 N. Y. 580, but in *Fowler* v. *Palmer*, 62 N. Y. 533, the doctrine of *Allerton* v. *Belden* was reaffirmed and it is still followed in New York. *Dennin* v. *Powers*, 96 Misc. 252. The principal case is sound on principle and finds general support in authority.

SPECIFIC PERFORMANCE—NEGATIVE CONTRACT—INJUNCTION.—S. entered into a written contract with the complainant, to serve it as editorial writer and have charge of the editorial page of the *New York Tribune* for four years. As part of his undertaking S. covenanted that he would not "write for or contribute to any other publication or periodical" during the term of the agreement. S. broke his contract and entered into an agreement with the McClure Syndicate for a series of articles. Complainant brought suit for an injunction. Backes, V. C., granted an injunction restraining S. from writing for any paper other than the *New York Tribune*. *Tribune Association* v. *Simonds, et al.* (N. J. Ch., 1918), 104 Atl. 386.

Mr. Frank H. Simonds, editorial writer for the *New York Tribune* and defendant in the principal case, has at last achieved distinction by breach of contract. He now belongs to the noble company of which Napoleon Lajoie, Annette Kellerman, and Mlle. Wagner (of blessed memory) are the bright particular stars. The seal of judicial approval is placed upon his unique quality. There is no other writer upon the war who can replace him, and damages however weighty can not compensate his employer. Thus Backes, V. C. It is true that the Vice-chancellor did not accept without qualification counsel's extravagant appraisal of Mr. Simonds, when in one ecstatic moment he said, "The loss to the world of Mr. Simonds's articles would be equal to that of the Huns entering Paris." But Mr. Simonds is unique, extraordinary, irreplacable, *sui generis*. His road to judicial fame was short if rugged. Though his first effort to obtain recognition in the courts was coldly received (*Kennerly* v. *Simonds*, 247 Fed. 822, 16 MICH. L. REV. 547), he was not discouraged. Perseverance brings its own reward.

Exegit monumentum aere perennius. For with the fall of brass in Berlin, who shall say that the New Jersey chancery reports will not outwear the most solemn "monument"?

STATE JURISDICTION OVER SOLDIERS.—Defendant, regularly enlisted, and acting as a dispatch driver, in the United States Naval Reserves, stationed at Newport, the headquarters of the second naval district, was arrested for exceeding the statutory speed limit of motor vehicles, in delivering a dispatch, under specific instructions of his superior officer to proceed with all possible dispatch, in an urgent matter pertaining to the conduct of the war between the United States and Germany; the naval forces stationed there were in control of the adjoining waters, and were charged with guarding the coasts from possible attacks. The lower state court certified the question of liability to the Supreme Court which *held,* Defendant not liable. *State* v. *Burton* (1918), — R. I. —, 103 Atl. R. 962.

The court says the conduct of the war rests wholly in the Federal Government. Any state law interfering therewith, or with the officers charged with prosecuting the war, is suspended for the time being. The plans of the naval authorities for the furtherance of that purpose cannot be obstructed by the enforcement of such state regulations. Federal officers cannot be prevented from performing their lawful duties by state laws or courts, without right to relief by the Federal Courts, since the Federal laws are paramount. *Cohens* v. *Virginia* (1821) 6 Wheat 264; *Tennessee* v. *Davis* (1879), 100 U. S. 257; *In re Neagle* (1889), 135 U. S. 1. Those in the military and naval service of the United States, while in the lawful performance of their duties are within this rule. *United States* v. *Clark* (1887), 31 Fed. 710; *In re Fair* (1900), 100 Fed. 149; *Ex parte Schlaffer* (1907), 154 Fed. 921; *In re Walzer* (1916), 235 Fed. 362, Ann. Cas. 1917 A-274. On the other hand an officer or soldier is not exempt from civil or criminal liability just because he is such officer, nor under a claim of performance of duty, if that is a mere subterfuge to evade liability. *In re Waite* (1897), 81 Fed. 359, 370. In time of peace the Federal Courts will not interfere with the prosecution of persons in the military service, in the State courts, for violation of State laws, unless they are at the time engaged in the actual performance of their duties as soldiers. *United States* v. *Lewis* (1906), 200 U. S. 1, 26 S. C. 229; but compare, *Ex parte Bright* (1874), 1 Utah 145. In England, the military is strictly subordinate to the civil power, and an officer, or a soldier under command of an officer, acts strictly at his peril, and is liable for the violation of the law,—"be hanged if he obeys, and be shot if he does not obey," if he violates the civil laws. DICEY, LAW OF THE CONSTITUTION, 8th Ed., pp. 297-302; notes pp. 512, 538; BATY & MORGAN, WAR, ITS CONDUCT & RESULTS, p. 147 et seq. In this country there is conflict among recent opinions. See *Commonwealth* v. *Shortall* (1903), 206 Pa. St. 165, 98 Am. St. R. 759, 65 L. R. A. 193, and *Franks* v. *Smith* (1911), 142 Ky. 232, Ann. Cas. 1912 D-319. See Notes Ann. Cas. 1917 C, pp. 9-27; L. R. A. 1917, B-702.